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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR            | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|---------------------------------|---------------------|------------------|
| 10/631,230  | 07/31/2003  | George C. Lackey                | 74123-001           | 1726             |
| 29493   | 7590        | 07/16/2004                      |                     |                  |
| HUSCH & EPPENBERGER, LLC<br>190 CARONDELET PLAZA<br>SUITE 600<br>ST. LOUIS, MO 63105-3441 |             | EXAMINER<br>THOMSON, MICHELLE R |                     |                  |
|   |             | ART UNIT<br>3641                |                     | PAPER NUMBER     |

DATE MAILED: 07/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|------------------------------|------------------------|---------------------|
|                              | 10/631,230             | LACKEY, GEORGE C.   |
| <b>Examiner</b>              | <b>Art Unit</b>        |                     |
| Michelle (Shelley) Thomson   | 3641                   |                     |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address. -

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 31 July 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-15 is/are pending in the application.  
4a) Of the above claim(s) 3,7,14 and 15 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1,2,4-6 and 8-13 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 04 November 2003 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/15/03.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: *figure*

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-13, drawn to a firearm supporting apparatus, classified in class 42, subclass 94.
  - II. Claims 14-15, drawn to a method of supporting a firearm, classified in class 42, subclass 106.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process such as a in the process of supporting a camera.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

1. This application contains claims directed to the following patentably distinct species of the claimed invention:
  - a. the adjustable mechanism includes an elongated threaded member (Figure. 3);
  - b. the adjustable mechanism includes an adjustable clamp (Figure 5).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 4, 5, and 8-12 appear to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Frederick Rusche on 7/7/04 a provisional election was made without traverse to prosecute the invention of Group I, species a, claims 1, 2, 4-6, and 8-13. Affirmation of this election must be made by applicant in replying to this Office action. Claims 3, 7, 14 and 15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference character(s) mentioned in the description: 36 and 32.
4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “34” has been used to designate both two different elements between figures 4 and 5.
5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “18” has been used to designate both “collar” and “fastening/adjustment device”; reference character “40” has been used to designate both “flexible material” and “clamping surface
6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 24.
7. Corrected drawing sheets, or amendment to the specification to add the reference character(s) in the description, are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1, 2, 4-6, and 8-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Gates et al. (US Patent # 6,588,637). Gates et al. discloses a supporting apparatus for attaching to various structures, the apparatus comprising an elongated support (reference 10) member having a concave (reference 44) clamping surface (reference 40) and a contoured (reference 18) firearm supporting surface comprising a concave cradle (reference 32) that is covered by a flexible material with a non-skid surface (reference 23) (column 2, lines 45-55); an u-bolt (i.e. collar) (reference 48) connected with the elongated support member; and an adjustable mechanism (nuts 52 and the threaded ends of u-bolt 48) connecting the collar with the elongated support member and adjusting the position of the collar relative to the clamping surface of the support member (column 3, lines 44-55), the collar and clamping surface securing the support member to a shaft (reference 50). The adjustable mechanism includes an elongated threaded member (column 3, lines 50-56) connected with the collar and the elongated support member and a fastening device (reference 52) associated with the threaded member, wherein tightening and loosening the fastening device on the threaded member adjusts the position of the collar relative to the clamping surface. The clamping surface includes upper and lower support arms

and the support member defines bolt holes (i.e. a collar slot) (reference 46) separating the upper and lower support arms (see examiner's notes on figure 1).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gates et al. as applied to claim 1 above. Gates et al. discloses that the device may be constructed of numerous materials including metals and plastics and specific selection of materials will depend on the characteristics of weight strength and function desired. Specifically the holding member and mounting stem are preferably formed of a stainless steel core provided with a thick coating of resilient rubber material. Although Gates et al. does not expressly disclose the clamping surface covered by the rubber material, it would be obvious for one of ordinary skill at the time the invention was made to construct the clamping surface covered by the rubber material in order to obtain a holding device that had excellent gripping and wear characteristics.

12. Claims 1, 2, 4-6, 8-11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradley (US Patent # 4,531,643) and McFaddin (US Patent # 1,090,929). Bradley discloses a firearm supporting apparatus suitable for use with supports of various sizes and shapes. The apparatus comprising an elongated support member (reference 1) having a clamping surface (reference 5) and a contoured firearm supporting surface (references 2, 15) covered by a flexible non-skid material comprising a concave cradle (reference 16) including a flexible material

covering a portion of the elongated support member (column 4, 39-45). Bradley further discloses the apparatus comprising various adjustable clamping devices for clamping the apparatus to supports of various sizes and shapes (columns 2 and 3). Although Bradley does not expressly disclose the specific clamp comprising the specific collar and adjustable mechanism, McFaddin does. McFaddin teaches a clamp bracket for securing items to posts of various shapes and sizes (page 1, lines 45-50) and the clamp is adapted for engagement with almost every conceivable shapes and may be secured on supports of diverse sizes (page 2, lines 60-70). The bracket comprising an elongated support member (reference A) having a clamping surface (reference d) and a collar (reference E) connected with the elongated support member and an adjustable mechanism (reference F) connecting the collar with the elongated support member and adjusting the position of the collar relative to the clamping surface of the support member, the collar and clamping surface securing the support member to a post (Figures 2, 5 and 6). The adjustable mechanism includes an elongated threaded member (reference F) connected with the collar and the elongated support member and a fastening device (reference G) associated with the threaded member, wherein tightening and loosening the fastening device on the threaded member adjusts the position of the collar relative to the clamping surface (page 2, lines 1-15), the clamping surface includes upper and lower support arms (page 1, lines 85 and 86) and the support member defines a collar slot separating the upper and lower support arms (page 1, lines 86-90). The diameter of the collar is varied and selected based on the diameter of the post. It would have been obvious to include collars of varying collars, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. Bradley and McFaddin are analogous art because they are from similar problem solving areas: attaching supporting

apparatuses to support members. Therefor, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the clamp bracket as taught by McFaddin with the firearm supporting apparatus as taught by Bradley. The suggestion/motivation for doing so would have been to obtain a portable sporting implement holder that was attachable to a wider variety of rigid supports as suggested by Bradley.

***Conclusion***

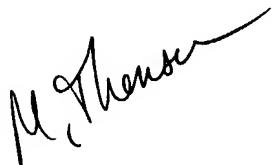
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hansare (US Patent # 5,566,915), Devall (US Patent # 5,723,808), Klosterman (US Patent # 5,769,372), Glebe (US Patent # 3,584,821), Morrison (US Patent # 3,233,517), Ertola (US Patent # 1,828,106), and Anderson (US Patent # 3,576,084), which are cited to disclosed related support structures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Thomson whose telephone number is 703.306.4176. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703.306.4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mrt

A handwritten signature in black ink, appearing to read "M. Thorne".

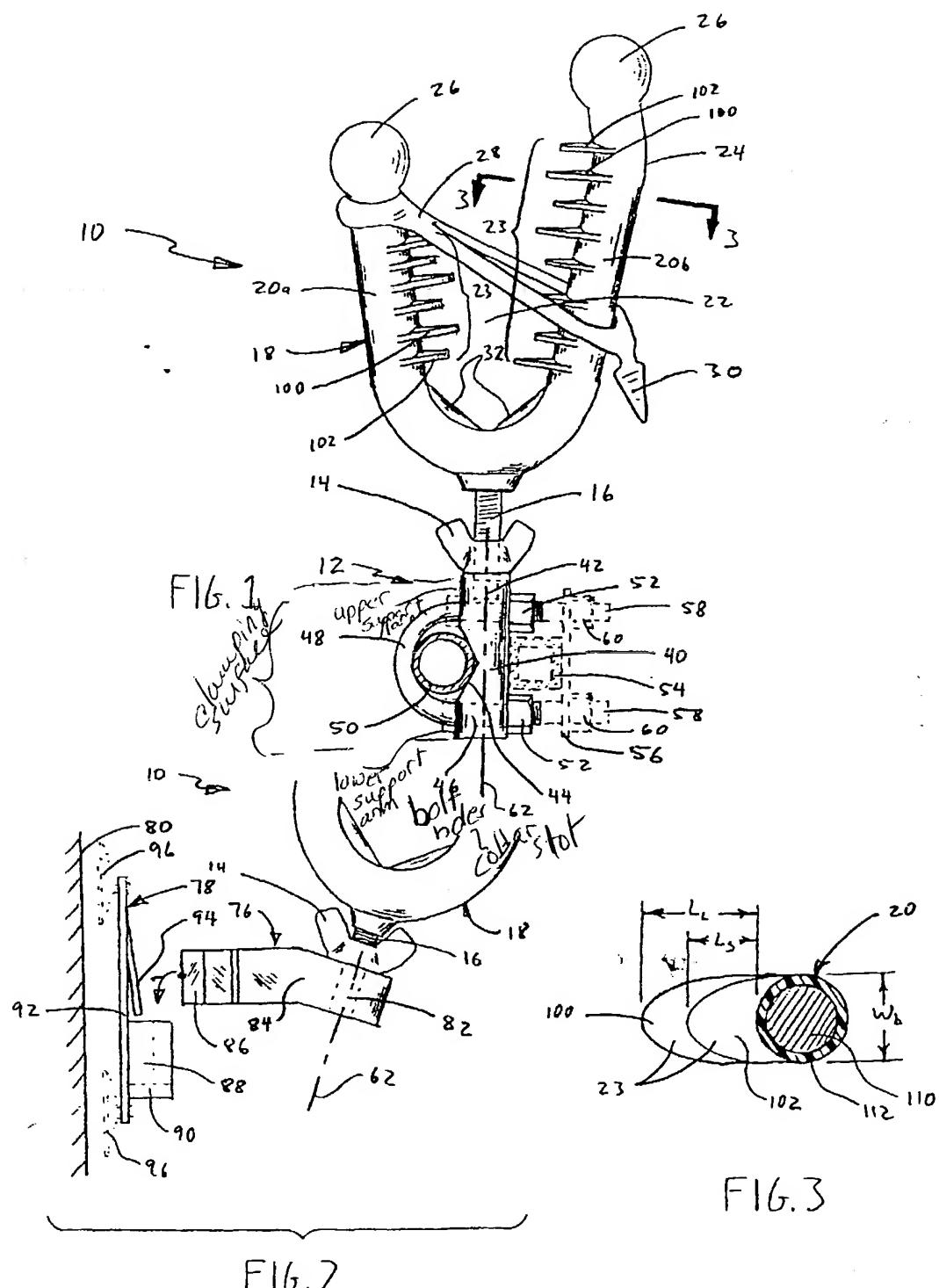


FIG. 2